SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 390

SCOTT M. LOFTIN AND JOHN W. MARTIN, AS TRUSTEES OF FLORIDA EAST COAST RAILWAY COMPANY,
Petitioners,

vs.

CHRISTINE DEAL.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA AND BRIEF IN SUPPORT THEREOF.

RUSSELL L. FRINK,
ROBERT H. ANDERSON,
Counsel for Petitioners.

JOHN H. WAHL, JR.,
Of Counsel.

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

The petition of Scott M. Loftin and John W. Martin, as Trustees of the Florida East Coast Railway Company for Writ of Certiorari to the Supreme Court of Florida to review the judgment entered by it affirming the judgment of the Circuit Court of Palm Beach County, Florida, in a cause therein lately pending wherein Christine Deal, the respondent, was plaintiff and the petitioners were defendants, alleges:

I. Summary Statement of the Matter.

The petitioners are the Trustees of the Florida East Coast Railway Company, duly appointed by the District

Court of the United States for the Southern District of Florida, in a re-organization proceeding therein pending under Section 77 of the Bankruptcy Act, by an order directing them to take charge of and operate the system of transportation of the Florida East Coast Railway Company.

The Florida East Coast Railway Company is a common carrier by railroad in interstate and intrastate commerce between Jacksonville, Florida and Miami, Florida.

On June 7, 1943 the respondent, Christine Deal, brought an action at law in the Circuit Court of Palm Beach County, Florida, against the Trustees, to recover damages for the death of her husband, alleged to have resulted from the negligent operation of a troop train, on March 29, 1943, when it struck a motor truck being operated by the respondent's husband, William Deal, at a grade crossing in the Town of Boynton in Palm Beach County, Florida.

The declaration contained four counts (R. 1) [1] but the trial judge withdrew Counts 2 and 4 from the consideration of the jury and submitted the case on the issues made by the First and Third Counts and the defendants' pleas of (1) not guilty [2], and (2) contributory negligence of the deceased (R. 8).

The First Count of the declaration alleged negligence in the operation of the train in general terms (R. 1). The Third Count charged negligent failure (a) to maintain certain automatic signal lights at the crossing in proper working order, and (b) to so maintain them that they would warn travelers approaching from the south (R. 4).

Both at the close of the plaintiff's case and at the close

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[1] All page references herein relate to the certified transcript.

[2] Under the Florida practice the plea of Not Guilty operates as a denial of both the alleged wrongful act and the damages claimed.

of all the evidence the defendants moved for a directed verdict. Their motion was denied (R. 35 and 120).

The case was submitted to a jury upon charges given at the request of the parties and by the court of its own motion. The jury returned a verdict of $10,000.00. The trial judge denied defendants' motion for a new trial and entered final judgment for the plaintiff (R. 143).

The defendants appealed to the Florida Supreme Court but the judgment was affirmed (R. 148).

Defendants applied to the Court for a rehearing (R. 152) which was denied on June 19, 1944 (R. 155).[3]

II. Jurisdictional Statement.

The statutory provision upon which it is contended that this Court has jurisdiction to review the judgment in question is Section 237 of the Judicial Code as amended (U. S. Code, 1940 Edition, Title 28, Chapter 9, § 344) wherein it is provided:

> "(b) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination * * * any cause wherein a final judgment or decree have been rendered or passed by the highest court of a state in which a decision could be had * * * where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution * * * of the United States."

The date of the judgment of the Supreme Court of Florida sought to be reviewed is May 19, 1944 (R. 148).

On June 19, 1944 the Supreme Court of Florida stayed the execution and enforcement of its judgment to enable petitioners to apply for a writ of certiorari to this Court and withheld its mandate (R. 155).

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[3] The application for rehearing asserted, inter alia, the Federal question which is the basis for this petition.

The opinion of the Supreme Court of Florida affirming the judgment of the Circuit Court of Palm Beach County will be found on pages 148 to 152 of the certified copy of the record filed herein. The date on which this petition for a writ of certiorari and supporting brief were filed in the Supreme Court of the United States was August 24th, 1944.

III. Questions Presented.

The question presented by this application is:

WHERE A STATE COURT OF LAST RESORT ON AN APPEAL BY A RAILROAD FROM A JUDGMENT ENTERED AGAINST IT FOR DAMAGES GROWING OUT OF A GRADE CROSSING ACCIDENT FINDS AS A MATTER OF FACT THAT THE RAILROAD NOT ONLY EXERCISED ALL ORDINARY AND REASONABLE CARE AND CAUTION IN THE OPERATION OF ITS TRAIN BUT ALSO HAD DILIGENTLY TRIED TO MINIMIZE THE DANGER OF GRADE CROSSING ACCIDENTS BY THE MAINTENANCE OF AN ADEQUATE SYSTEM OF AUTOMATIC WARNING SIGNALS, BUT NONETHELESS AFFIRMS A JUDGMENT AGAINST IT, IS THERE A DENIAL OF DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS UNDER THE FOURTEENTH AMENDMENT OF THE CONSTITUTION?

IV. Reasons Relied On for the Allowance of the Writ.

The facts as found and recited in the majority[4] opinion disclose that:

> "Deal was quite familiar with the intersection, as he had passed there continually for many years * * *. On the east side of the main track and north of Lake Street was a warning signal designed to flash alternate red lights on the approach of a train, and west of the crossing and south of the street was a device of the same kind. * * * There was a preponderance of evidence * * * that the whistle was blown repeatedly as the train neared the scene and that

[4] Three of the seven justices of the Florida Supreme Court dissented.

> the bell of the locomotive was ringing. When the engineer saw the truck perilously near the track he applied the emergency brakes and brought the train to a stop as quickly as he could without derailing it. * * * There was abundant proof, too, that the signal lights were flashing. * * * No one denied the story of a traveler who approached from the opposite direction * * *. He testified that the red signal light facing him on the west side of the track was functioning. He saw and heeded it and made a frantic effort to warn the deceased of the impending danger. * * * Obviously, the company had diligently tried to minimize that danger by the maintenance of an adequate signal system. The engineer attempted further to lessen the danger in this particular instance by sounding the whistle and ringing the bell, yet Deal went on the track, not heeding these sounds if he heard and not paying attention to the warning of the other traveler if he saw. * * *''

Such facts, affirmatively disclosing the exercise of a high degree of care and caution by appellants, are irreconcilable and at complete variance with the conclusion that "The whole picture leads to the belief that negligence was chargeable to both parties to the cause * * *." Such a conclusion denied the appellants the equal protection of the laws and deprives them of their property without due process of law in contravention of their rights under the Fourteenth Amendment to the Constitution of the United States.

The railroad admitted that the special troop train involved in this accident was going 65 miles an hour. There is not a scintilla of evidence of any other negligence in this case. On the contrary, it affirmatively shows that the railroad took every precaution to protect travelers on the highway from the inherent dangers of crossing accidents. The evidence established and the Supreme Court found

that the deceased was negligent in proceeding upon a familiar crossing without looking or listening or using any degree of care for his own safety.

The Florida Supreme Court has held, as have the courts in all other jurisdictions, we believe, that the speed of a train in and of itself is not negligence. Previous decisions to this effect were cited in the dissenting opinion:

Powell v. *Gary,* 146 Fla. 334, 200 So. 854;
Roberts v. *Powell,* 137 Fla. 159, 187 So. 766.

As the evidence showed the deceased's negligence affirmatively and likewise disclosed the exercise by the railroad not only of due care but, actually, an unusually high degree of care, the recovery of damages against the petitioners was a denial of due process of law and a denial of the equal protection of the laws.

In accordance with the rules of this Court, a concise memorandum is filed herein in support of this petition.

Wherefore, your petitioners pray that a writ of certiorari be issued to the Supreme Court of Florida commanding it to transmit the record of its judgment of May 19, 1944 affirming the decision of the Circuit Court of Palm Beach County, Florida, in the cause styled "Scott M. Loftin and John W. Martin, Co-Trustees of the Florida East Coast Railway Company, Appellants, vs. Christine Deal, Appellee" for review and determination herein.

Miami, Florida, this 24th day of August, 1944.

RUSSELL L. FRINK,
ROBERT H. ANDERSON,
Attorneys for Petitioners.

JOHN H. WAHL, JR.,
Of Counsel.